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4 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 KHALIHLA DWAN SHAW,

7 Plaintiff,

8 v.

9 NANCY A. BERRYHILL, Acting
Commissioner of Social Security

10 Defendants.

Case No. 3:16-cv-06026-TLF

ORDER AFFIRMING THE
COMMISSIONER'S DECISION TO
DENY BENEFITS

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12 Plaintiff Khalihla Dwan Shaw has brought this matter for judicial review of the
13 Commissioner's denial of her applications for disability insurance and supplemental security
14 income (SSI) benefits. The parties have consented to have this matter heard by the undersigned
15 Magistrate Judge. 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73; Local Rule MJR 13.
16 For the reasons set forth below, the Court finds the Commissioner's decision to deny benefits
17 should be affirmed.

18 FACTUAL AND PROCEDURAL HISTORY

19 On June 18, 2014, Ms. Shaw filed an application for disability insurance benefits and
20 another one for SSI benefits, alleging in both applications that she became disabled beginning
21 November 1, 2007. Dkt. 14, Administrative Record (AR) 22. Both applications were denied on
22 initial administrative review and on reconsideration. *Id.* A hearing was held before an
23 administrative law judge (ALJ), at which Ms. Shaw appeared and testified as did a vocational
24 expert. AR 50-117. Also at the hearing, Ms. Shaw amended her alleged onset date of disability to
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1 February 28, 2014, secondary to work activity. AR 22.

2 In a decision dated July 6, 2016, the ALJ found that Ms. Shaw could perform both her
3 past relevant work and other work existing in significant numbers in the national economy, and
4 therefore that she was not disabled. AR 22-38. Ms. Shaw's request for review of the ALJ's
5 decision was denied by the Appeals Council on October 18, 2016, making it the Commissioner's
6 final decision, which Ms. Shaw then appealed in a complaint filed with this Court on December
7 21, 2016. AR 1; Dkt. 3; 20 C.F.R. § 404.981, § 416.1481.

8 Ms. Shaw seeks reversal of the ALJ's decision and remand for further administrative
9 proceedings, arguing the ALJ erred in failing to provide specific and legitimate reasons for
10 discounting the medical opinion evidence from Coral Hilby, M.D., and Myrna Palasi, M.D. For
11 the reasons set forth below, however, the Court disagrees the ALJ erred as alleged, and therefore
12 finds the decision to deny benefits should be affirmed.

13 DISCUSSION

14 The Commissioner's determination that a claimant is not disabled must be upheld if the
15 "proper legal standards" have been applied, and the "substantial evidence in the record as a
16 whole supports" that determination. *Hoffman v. Heckler*, 785 F.2d 1423, 1425 (9th Cir. 1986);
17 *see also Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004); *Carr v.*
18 *Sullivan*, 772 F.Supp. 522, 525 (E.D. Wash. 1991). "A decision supported by substantial
19 evidence nevertheless will be set aside if the proper legal standards were not applied in weighing
20 the evidence and making the decision." *Carr*, 772 F.Supp. at 525 (citing *Browner v. Sec'y of*
21 *Health and Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1987)). Substantial evidence is "such
22 relevant evidence as a reasonable mind might accept as adequate to support a conclusion."
23 *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citation omitted); *see also Batson*, 359 F.3d at
24 1193.

1 The Commissioner's findings will be upheld "if supported by inferences reasonably
2 drawn from the record." *Batson*, 359 F.3d at 1193. Substantial evidence requires the Court to
3 determine whether the Commissioner's determination is "supported by more than a scintilla of
4 evidence, although less than a preponderance of the evidence is required." *Sorenson v.*
5 *Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). "If the evidence admits of more than one
6 rational interpretation," that decision must be upheld. *Allen v. Heckler*, 749 F.2d 577, 579 (9th
7 Cir. 1984). That is, "[w]here there is conflicting evidence sufficient to support either outcome,"
8 the Court "must affirm the decision actually made." *Allen*, 749 F.2d at 579 (quoting *Rhinehart v.*
9 *Finch*, 438 F.2d 920, 921 (9th Cir. 1971)).

10 The ALJ is responsible for determining credibility and resolving ambiguities and
11 conflicts in the medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). Where
12 the evidence is inconclusive, "questions of credibility and resolution of conflicts are functions
13 solely of the [ALJ]." *Sample v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982). In such situations,
14 "the ALJ's conclusion must be upheld." *Morgan v. Comm'r of the Soc. Sec. Admin.*, 169 F.3d
15 595, 601 (9th Cir. 1999). Determining whether inconsistencies in the evidence "are material (or
16 are in fact inconsistencies at all) and whether certain factors are relevant to discount" medical
17 opinions "falls within this responsibility." *Id.* at 603.

18 In resolving questions of credibility and conflicts in the evidence, an ALJ's findings
19 "must be supported by specific, cogent reasons." *Reddick*, 157 F.3d at 725. The ALJ can do this
20 "by setting out a detailed and thorough summary of the facts and conflicting clinical evidence,
21 stating his interpretation thereof, and making findings." *Id.* The ALJ also may draw inferences
22 "logically flowing from the evidence." *Sample*, 694 F.2d at 642. Further, the Court itself may
23 draw "specific and legitimate inferences from the ALJ's opinion." *Magallanes v. Bowen*, 881

1 F.2d 747, 755, (9th Cir. 1989).

2 The ALJ must provide “clear and convincing” reasons for rejecting the uncontradicted
3 opinion of either a treating or examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.
4 1996). Even when a treating or examining physician’s opinion is contradicted, that opinion “can
5 only be rejected for specific and legitimate reasons that are supported by substantial evidence in
6 the record.” *Id.* at 830-31. However, the ALJ “need not discuss *all* evidence presented” to him or
7 her. *Vincent on Behalf of Vincent v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984) (citation
8 omitted) (emphasis in original). The ALJ must only explain why “significant probative evidence
9 has been rejected.” *Id.*; *see also Cotter v. Harris*, 642 F.2d 700, 706-07 (3rd Cir. 1981); *Garfield*
10 *v. Schweiker*, 732 F.2d 605, 610 (7th Cir. 1984).

11 In general, more weight is given to a treating physician’s opinion than to the opinions of
12 those who do not treat the claimant. *See Lester*, 81 F.3d at 830. On the other hand, an ALJ need
13 not accept the opinion of a treating physician, “if that opinion is brief, conclusory, and
14 inadequately supported by clinical findings” or “by the record as a whole.” *Batson v. Comm’r of*
15 *Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004); *see also Thomas v. Barnhart*, 278 F.3d
16 947, 957 (9th Cir. 2002); *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001). An
17 examining physician’s opinion is “entitled to greater weight than the opinion of a nonexamining
18 physician.” *Lester*, 81 F.3d at 830-31. A non-examining physician’s opinion may constitute
19 substantial evidence if “it is consistent with other independent evidence in the record.” *Id.* at
20 830-31; *Tonapetyan*, 242 F.3d at 1149.

21 In regard to the medical opinion evidence in the record, Ms. Shaw contends that evidence
22 is insufficient to support the ALJ’s following findings:

23 On March 16, 2015, [state agency] medical examiner Dr. Hilby opined the
24 claimant was limited to sedentary work to severely limited. The opinion is
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1 given little weight because it is inconsistent with the clinical findings of
2 treatment providers. Specifically, [Nathanial R. Schlichter, M.D.,] found she
3 had no back tenderness, good range of motion in all major joints, no
4 musculoskeletal tenderness, normal motor and sensory function, no focal
5 neurologic deficits, and stable gait. ARNP [Vickie] Luttrell found she had
6 normal gait, negative straight leg raise, and intact sensation, normal reflexes
7 and full strength in the lower extremities. [James B. Lee, M.D.,] found she
8 had no back tenderness, no bony tenderness, good range of motion in all
9 major joints, normal motor and sensory function, and focal neurologic
10 deficits.

11 . . .

12 On April 2, 2015, [the state agency] assigned contractor Myrna Palasi, MD,
13 opined the claimant was limited to sedentary work. The opinion is given little
14 weight because it was based on the assessment of Dr. Hilby, with is given
15 little weight for the reasons indicated above.

16 AR 34 (internal citations omitted); *see also* AR 656, 790, 1289, 1292-93, 1366, 1398-1401,
17 1424-27, 1705-08, 1843.

18 Ms. Shaw argues the ALJ erred by picking and choosing only evidence in the record that
19 supported his ultimate conclusion, while rejecting other evidence that was more favorable to Ms.
20 Shaw. Specifically, Ms. Shaw faults the ALJ for relying on the clinical findings from Dr.
21 Schlichter and Dr. Lee, because those medical sources only saw her during emergency room
22 visits. Ms. Shaw further faults the ALJ for not pointing to clinical findings noted by ARNP
23 Luttrell and other medical findings that actually support her claims.

24 The only contact Dr. Schlichter and Dr. Lee had with Ms. Shaw was during emergency
25 room visits, yet their findings were essentially unremarkable. AR 656, 790, 1289, 1292-93, 1366,
1843. ARNP Luttrell did record some abnormal findings, but for the most part they too were
fairly unremarkable. AR 1705-08. The bulk of the clinical findings in the record from other
treatment providers were largely normal as well. AR 1222, 1305-06, 1321, 1481, 1636-37, 1642,
1646-47, 1653-54, 1658, 1741, 1745, 1763, 1778-79, 1791, 1802-03, 1831; *compare with* AR

1 1686. Accordingly, the ALJ's determination to give little weight to the opinion evidence from
2 Dr. Hilby and Dr. Palasi is supported by substantial evidence and free of legal error. *Batson*, 359
3 F.3d at 1195 (an ALJ need not accept a medical opinion if that opinion is inadequately supported
4 by clinical findings or by the record as a whole).

5 CONCLUSION

6 Based on the foregoing discussion, the Court finds the ALJ properly determined Ms.
7 Shaw to be not disabled. Defendant's decision to deny benefits therefore is AFFIRMED.

8 Dated this 23rd day of June, 2017.

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12 Theresa L. Fricke
13 United States Magistrate Judge
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